

United States District Court
Western District of Texas
Austin Division

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREG ABBOTT, in his capacity as Governor
of the State of Texas, and THE STATE OF
TEXAS,

Defendants.

No. 1:23-cv-00853-DII

EPI'S CANOE & KAYAK TEAM, LLC AND
JESSIE FUENTES,

Plaintiffs,

v.

STATE OF TEXAS, *et al.*,

Defendants.

No. 1:23-cv-00836-DII

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS FOR PRELIMINARY
INJUNCTION**

EXHIBIT F

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action
)	
GREG ABBOTT, IN HIS OFFICIAL)	No.: 1:23-00853-DAE
CAPACITY AS GOVERNOR OF THE)	
STATE OF TEXAS, AND THE STATE)	
OF TEXAS,)	
)	
Defendant.)	

ORAL DEPOSITION OF

JOSEPH SHELNUTT

AUGUST 7, 2023

VOLUME 1

ORAL DEPOSITION OF JOSEPH SHELNUTT, produced as a witness at the instance of the DEFENDANT, and duly sworn, was taken in the above-styled and numbered cause on August 7, 2023, from 10:00 a.m. to 1:06 p.m., before Amber Garcia, Notary Public in and for the State of Texas, reported by machine shorthand, at the United States Attorney's Office, 801 Cherry Street, Fort Worth, Texas 75201, pursuant to the Federal Rules of Civil Procedure.

A P P E A R A N C E S

FOR THE PLAINTIFF:

MR. BRIAN LYNK
United States Attorney's Office - Department of Justice
601 N.W. Loop 410
Suite 600
San Antonio, Texas 78216
Phone: (202) 532-3131
Brian.lynk@usdoj.gov

MR. LANDON A. WADE
United States Attorney's Office - West District
903 San Jacinto Boulevard
Suite 334
Austin, Texas 78701
Phone: (512) 916-5858
landon.wade@usdoj.gov

MS. KATHERINE T. ROONEY
U.S. Army Corps of Engineers - Assistant District
Counsel
Phone: (817) 886-1149
katherine.t.rooney@usace.army.mil

FOR THE DEFENDANT:

MR. DAVID BRYANT
Office of the Attorney General of Texas
300 W. 15th Street
Austin, Texas 78701
Phone: (512) 936-2275
david.bryant@oag.texas.gov

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P R O C E E D I N G S

THE REPORTER: We are on the record. This is the deposition of Joseph Shelnutt in the matter of United States of America versus Greg Abbott, et al. Our location is 801 Cherry Street in Forth Worth, Texas, and we are on the record at 10:00 a.m. My name is Amber Garcia and my business address is 9901 Brodie Lane, Austin, Texas 78748.

Would all Counsel present please state their appearances for the record.

MR. LYNK: This is Brian Lynk from the Department of Justice Environmental Defense Section on behalf of Plaintiff, The United States. I'm lead counsel for the United States in this matter.

MR. WADE: This is Landon Wade for the U.S. Attorney's Office for the Western District of Texas, also Counsel for Plaintiff in this matter.

MS. ROONEY: Katherine Rooney, Counsel for the U.S. Army Corps of Engineers, also for the plaintiff.

MR. BRYANT: My name is David Bryant. I'm special counsel in the office of the Attorney General of Texas, representing the defendants in this case.

THE REPORTER: Do y'all have any further stipulations y'all would like to put on the record?

MR. BRYANT: None as far as I'm concerned.

MR. LYNK: None that we have as well.

1 MR. BRYANT: Okay. Mr. Shelnutt, we're here in
2 a case in which you --

3 THE REPORTER: I need to swear in the witness.

4 MR. BRYANT: I'm sorry?

5 THE REPORTER: I need to swear him in. Sorry.

6 MR. BRYANT: Okay. Please do.

7 JOSEPH SHELNUTT,
8 having been first duly sworn, testified as follows:

9 EXAMINATION

10 BY MR. BRYANT:

11 Q. Mr. Shelnutt, we're here in a -- a case in which
12 you've given a declaration in support of a motion for
13 preliminary injunction by the United States of America. By
14 agreement, we're taking this deposition and it is limited for
15 purposes of today to a maximum of three hours, and I'll ask the
16 court reporter to keep track of the time that we're on the
17 record. Could you state your office address, please?

18 A. It's the federal building here in Fort Worth. I'm
19 not sure the exact street address.

20 Q. But you know how to get there?

21 A. I do know how to get there, yes.

22 Q. Okay. How long have you worked for the Army Corps of
23 Engineers?

24 A. Approximately eight years.

25 Q. And what did you do immediately prior to becoming

1 **employed by the Army Corps of Engineers?**

2 A. I was a freelance consultant.

3 **Q. What type of consulting did you do during that**
4 **period?**

5 A. Various kinds of biological consulting.

6 **Q. Okay. And during that period, where were you**
7 **located?**

8 A. Which period?

9 **Q. The period when you were a freelance consultant.**

10 A. In Hood County, Texas. And prior to that, in Central
11 Alabama.

12 **Q. When did you begin that period of freelance**
13 **consulting?**

14 A. Approximately, 2004 to 2000- -- no. No.
15 Approximately, 2008.

16 **Q. Okay. And typically, who were your clients during**
17 **your freelance consulting work?**

18 A. Various. They might be nonprofits that might have
19 some interest in various biological work or conservation work.
20 Some might have an interest in running their -- advice on
21 running their boards, which has overlap into the actual work
22 that they do.

23 **Q. Have you ever done any freelance consulting or other**
24 **work for the State of Texas or any agency or -- or subdivision**
25 **of the State of Texas?**

1 A. I had some overlap into consulting with the Texas A&M
2 University system.

3 Q. Anything else?

4 A. With the State of Texas?

5 Q. Yes, sir.

6 A. Not that I can recall.

7 Q. Okay. When did you graduate from college with a
8 bachelor's degree?

9 A. 1996.

10 Q. And what was your first employment after you
11 completed your degree?

12 A. I was the director of the Raptor Center at Auburn
13 University.

14 Q. How long did you have that job?

15 A. Well, that's quite a while ago, so approximately
16 seven years.

17 Q. And what was your next job after your work with the
18 Raptor Center?

19 A. I worked for Bartlett Ranches, and they also had a --
20 a linked conservancy linked with their ranches, so...

21 Q. And what did you do for the Bartlett Ranches while
22 you were employed by them?

23 A. I did various educational outreach concerning
24 wildlife conservation, birds of prey. Also implemented
25 wildlife management scenarios on their three properties.

1 Q. Where are their three properties located, in general?

2 A. At the time?

3 Q. Yes.

4 A. Central Alabama; Brock, Texas and Chugwater, Wyoming.

5 Q. All right. Once you became employed by the Army
6 Corps of Engineers, what was your first position there?

7 A. I was a regulatory specialist in the evaluations
8 branch of the Regulatory Division here in Forth Worth, Texas.

9 Q. When did you begin your employment with the Army
10 Corps of Engineers? It was about eight years ago, but --

11 A. Approximately mid November of 2015.

12 Q. And what, if any, specialized training did you
13 receive in connection with your work in the Regulatory Division
14 of the Army Corps of Engineers?

15 A. Since I've been employed with the Corps of Engineers?

16 Q. Yes.

17 A. Various -- what's known as "regulatory prospect
18 courses" that deal with the execution of duties in the
19 regulatory role. Some are more specialized, have to do with
20 jurisdiction, compliance enforcement, various repair and
21 wetland training.

22 Q. After your initial position with the Army Corps of
23 Engineers, what was your next position?

24 A. Regulatory project manager.

25 Q. And is that your current position?

1 A. It is.

2 Q. When did you first become a regulatory project
3 manager for the Army Corps of Engineers?

4 A. I'm going to say, approximately, 2017, maybe early
5 2018, somewhere in that time frame. I'm not sure of the exact
6 date.

7 Q. Okay. You have the title of Regulatory Project
8 Manager. What types of projects does that refer to?

9 A. Projects that would come to the Regulatory Division
10 concerning Section 4 for the Clean Water Act and Section 10 of
11 the Rivers and Harbors Act of 1899.

12 Q. Okay. And what does such a project typically consist
13 of?

14 A. Well, it could be a broad range. Typically,
15 applicants that come to us are seeking to impact waters in one
16 of those two statutes that may require a permit, or they may
17 seek advice on how to proceed preapplication.

18 Q. To whom do you report in your current position?

19 A. I report to Mr. Neil Lebsock.

20 Q. What's his title?

21 A. He is the chief of the Compliance Enforcement Branch
22 within the Fort Worth Regulatory Division.

23 Q. All right. Let me hand you what's been marked as
24 Exhibit 1 to your deposition.

25 (Exhibit No. 1 was marked.)

1 MR. BRYANT: Excuse my reach.

2 MR. LYNK: Thank you.

3 Q. (BY MR. BRYANT) Have you seen this document before,
4 Mr. Shelnutt?

5 A. I have not.

6 Q. Okay. This is a -- a subpoena pursuant to which the
7 defendants requested that you testify today, and you are here,
8 so I guess you didn't need to know that you had a subpoena.
9 Appreciate your presence. Let me hand you what's been marked
10 as Exhibit 2 to your deposition.

11 (Exhibit No. 2 was marked.)

12 MR. LYNK: Thank you.

13 MR. BRYANT: Sure.

14 Q. (BY MR. BRYANT) Can you identify Exhibit 2,
15 Mr. Shelnutt?

16 A. Sorry. What was the question again?

17 Q. Could you identify or tell us what that document is?

18 A. It's my declaration.

19 Q. Okay. And is that a declaration that you,
20 personally, signed?

21 A. It is.

22 Q. And did you, personally, prepare all of that
23 declaration?

24 A. I -- this declaration was -- parts of this was
25 drafted. I took the declaration, I edited it, and I reviewed

1 it, and then I signed it.

2 Q. Okay. Did you, personally, draft any of the
3 declaration that's Exhibit 2?

4 A. Did I personally -- what was the question again?

5 Q. Did you, personally, draft it as opposed to review
6 and edit it?

7 A. I did not draft all of it, but I reviewed all of it,
8 and I edited portions of it.

9 Q. Okay. And my question is whether you drafted any of
10 it?

11 A. Yes.

12 Q. What portions?

13 A. Oh, I edited portions on Item 1, Item 2, portions of
14 Item 5.

15 Q. Are these -- these -- when you say "Item 5," are you
16 referring to the numbered Paragraph 5?

17 A. I am.

18 Q. Okay. And are you saying that you originally drafted
19 portions of that or just that you edited portions of that?

20 A. I edited.

21 Q. Okay.

22 A. And which means that I changed things and I
23 inserted -- I added to it.

24 Q. Very good. Okay. Can --

25 A. Would you like me to continue?

1 Q. Are there any -- are there any paragraphs that you
2 originally drafted?

3 A. Complete paragraphs, is that what you're asking?

4 Q. No. Just paragraphs that you took the first draft
5 of, as opposed to got them from someone else and -- and edited
6 or added to.

7 A. No.

8 Q. Mr. Shelnutt, I believe that Exhibit 2 indicates that
9 you have a master's degree. When did you receive that master's
10 degree?

11 A. 2015.

12 Q. Okay. And was that an online degree or did you go
13 somewhere to get that?

14 A. It was an online degree.

15 Q. And what was the specific topic or topics that were
16 the subject of your master's degree?

17 A. Environmental Policy with a concentration in Fish and
18 Wildlife Management.

19 Q. Okay. And was that a -- done at the request or at
20 the expense of the Army Corps of Engineers?

21 A. It was not.

22 Q. Mr. Shelnutt, my understanding is that the Fort Worth
23 District of the Army Corps of Engineers includes some counties
24 that are along the Rio Grande River. Do you know how many?

25 A. I do not know a total number of counties.

1 Q. Do you know the approximate length of the river over
2 which the Fort Worth District of the Army Corps of Engineers
3 has jurisdiction?

4 A. I do not know the approximate length.

5 Q. Okay. Do you know how many permits have been issued
6 by the Army Corps of Engineers with respect to projects on the
7 Rio Grande section of the Fort Worth District?

8 A. I do not.

9 Q. Do you know if there are any?

10 A. I'm aware that there are project numbers that appear
11 along the Rio Grande.

12 Q. Does that mean that there are permits issued or could
13 it be simply that those are applications or expressions of
14 interest in -- in getting a permit?

15 A. Both.

16 Q. Okay. So is it fair to say that you don't know
17 whether the Fort Worth District has actually issued any permits
18 for projects on the portion of the Rio Grande River that is
19 within its jurisdiction?

20 A. Are you speaking of the entire portion of the
21 Rio Grande?

22 Q. That is within the Fort Worth Division's
23 jurisdiction.

24 A. The Fort Worth District has completed permits on the
25 Rio Grande River.

1 Q. Okay. Could you further identify any of them?

2 A. Not personally.

3 Q. Is it correct that you have not personally worked on
4 a permit application with respect to the -- any project on the
5 Rio Grande River within the Fort Worth Division?

6 A. I recall working in -- on projects in proximity --
7 close proximity to the Rio Grande River, but I do not remember
8 working on projects that were in waters of the Rio Grande
9 River.

10 Q. Okay.

11 A. That I was assigned.

12 Q. Have you ever worked on applications for permits or
13 related projects within Maverick County, Texas?

14 A. No.

15 Q. Prior to July 2023, did you ever travel to Maverick
16 County, Texas in connection with your work with the Army Corps
17 of Engineers?

18 A. No.

19 Q. Prior to July 2023, had you ever been to Maverick
20 County, Texas in any -- in your life?

21 A. No.

22 Q. Is it correct that one of the things that you do in
23 your job is to do investigations of reports of situations that
24 might require a permit from the Army Corps of Engineers?

25 A. Yes.

1 Q. Have you ever done an investigation for that purpose
2 with respect to any activities on the Rio Grande River within
3 the Fort Worth Division prior to July 2023?

4 A. No.

5 Q. Have you ever observed any commercial navigation on
6 the Rio Grande River in Texas?

7 A. Not that I'm aware of.

8 Q. Had you ever seen the Rio Grande River prior to July
9 2023?

10 A. Yes.

11 Q. Where -- what portions of the Rio Grande River had
12 you seen prior to July 2023?

13 A. Approximate vicinity of Laredo, Texas.

14 Q. And on how many occasions had you been there?

15 A. I believe three times.

16 Q. Were those all in connection with your work for the
17 Army Corps of Engineers?

18 A. In Laredo?

19 Q. Yes.

20 A. Correct.

21 Q. Excuse me. Have you ever seen the Rio Grande River
22 in the area generally referred to the "Rio Grande Valley,"
23 which is closer to the Gulf of Mexico than Laredo or Maverick
24 County?

25 A. No.

1 Q. Okay. I understand that you do, as part of your job,
2 investigations of reports of activity that might require
3 permits from the Army Corps of Engineers; is that right?

4 A. That's correct.

5 Q. And what's your methodology for doing such
6 investigations when you're asked to do so?

7 A. Well, it depends on what the -- what the assignment
8 is. So typically, we refer to -- I'm going to call it
9 "complaints," that may come to us from various sources as
10 unauthorized activity or potential or alleged unauthorized
11 activity. In that case, we may have a lot of information or we
12 may have very little to -- to no information, and you could
13 take various tracks there.

14 We -- I could be forced to find various contacts
15 to make our initial contact with. We may already have that
16 information or we can go ahead and make that contact. First,
17 we need to determine, is it a water under our jurisdiction, and
18 then has a impact to that water occurred, and if so, did it
19 require a permit?

20 Q. Now, you referred to a "contact." What -- who would
21 that be?

22 A. Potential violator.

23 Q. Okay.

24 A. Or witnesses.

25 Q. Do you typically -- or is it part of your methodology

1 to get in touch with what I would refer to as the
2 "complainant," any -- the person or persons who may have made
3 the Corps of Engineers aware of some situation that might need
4 investigation?

5 A. So you mean the person reporting?

6 Q. That would be the person or persons reporting a
7 situation that brings it to your attention.

8 A. Usually, we have that person's information. They --
9 they bring the complaint to us or the information to us. I
10 don't know if it's a complaint at that point. And they can
11 elect to remain anonymous or they can elect not to. But we
12 typically have some -- some level of information about them and
13 how to get in touch with them, yes.

14 Q. And so is it typical that you would get in touch with
15 them?

16 A. With the person alleging a violation?

17 Q. Yes.

18 A. It depends.

19 Q. Okay. Is there any place that either your personal
20 methodology or the divisions methodology or the Corps's
21 methodology for investigating a report or complaint of that
22 kind is written down?

23 MR. LYNK: Object to form.

24 A. Yes.

25 Q. (BY MR. BRYANT) Where is that?

1 A. It would be in the project file.

2 Q. And is that a -- a different document for each
3 different project?

4 A. It would be.

5 Q. Okay. Is there any more general statement of the
6 methodology that the Army Corps of Engineers or your division
7 uses in investigating reports or complaints about activities
8 that might require permits?

9 A. There are. There's a -- there's a course, it's
10 called a "prospect course" for compliance and enforcement
11 personnel. These personnel -- various districts around the
12 country attend these courses regularly, and that's where they
13 get their initial training on how to conduct business under the
14 compliance and enforcement branch.

15 Q. Okay. Is there anything else that describes the
16 required or expected methodology for investigating such a
17 report or complaint?

18 A. There is a -- yes. There -- in the regs, there's the
19 regulations for compliance enforcement. And I believe it's
20 33 CFR 326.

21 Q. Okay. In connection with the -- what I'll refer to
22 as "floating buoys" in the Rio Grande River that are the
23 subject of this action, when did you first become aware of
24 them?

25 A. Approximately around July 10th.

1 Q. And how did you become aware of them at that time?

2 A. Public media.

3 Q. Do you recall any particular public media that you
4 accessed at that time?

5 A. I don't recall. There was numerous public media
6 reports. I don't recall a specific one --

7 Q. Okay.

8 A. -- a specific outlet.

9 Q. Did you or the Army Corps of Engineers receive any
10 complaints or reports other than what they may have seen in the
11 public media?

12 A. In the Fort Worth office?

13 Q. Yes, let's start with that.

14 A. At -- so I'm going to ask, at what time did you ask?
15 What time frame -- would you repeat the question, sir?

16 Q. Yeah. I'm -- what -- say, anytime after June 1st,
17 2023, did the Fort Worth office of the Army Corps of Engineers
18 or anybody within it, to your knowledge, receive a complaint or
19 a report regarding floating buoys in the Rio Grande River that
20 are the subject of this case?

21 A. Yes.

22 Q. Who did you receive such a report or complaint from?

23 A. It came down from our headquarters in Washington,
24 D.C.

25 Q. Okay. Do you know of any person or persons who sent

1 that report or complaint to the Fort Worth Division of the Army
2 Corps of Engineers in June or July of 2023?

3 A. My understanding is that -- I'm aware that the
4 International Border [sic] and Water Commission, IBWC.

5 Q. And what information did the Fort Worth Division
6 receive fr- -- either from Army Corps of Engineers headquarters
7 in Washington or from the International Border [sic] Waters
8 Commission regarding the floating buoys in June or July of
9 2023?

10 A. It was a -- a document that contained text describing
11 what they had seen, photographs, and at least one map.

12 Q. When you say "they," who are you referring to?

13 A. IBWC.

14 Q. Okay. Did that information express concern about the
15 location of the floating buoys, and whether they were on the
16 Texas side or the Mexican side of the International Boundary
17 Line?

18 A. So -- so my recollection is that document contained
19 information that related to potential impacts in the Shelby
20 Park area. And I believe that original document referred to
21 buoys so- -- downstream of Shelby Park.

22 Q. Okay. Did that document express any concern about
23 whether the -- the buoys that were in the river were on the
24 Texas or Mexican side of the international boundary?

25 A. I don't recall language in that document that

1 addressed that particular aspect.

2 Q. Okay. Did you later receive an expression of concern
3 on that subject from anyone?

4 A. I don't recall concern about that particular aspect.

5 Q. Okay. When you -- when you went to Maverick County
6 or at any other time, did you verify that the floating buoys at
7 their then current location were on the Texas side of the
8 international boundary?

9 A. I'm unaware exactly where the international boundary
10 is within the Rio Grande.

11 Q. Okay. Did you verify that the buoys at their current
12 location are closer to the Texas shore than to the Mexican
13 shore at that location?

14 MR. LYNK: Object to form.

15 A. What I observed at -- at the time of the site visit
16 on the 13th of July while this structure was under
17 construction, it was closer to the United States side of the
18 river.

19 Q. (BY MR. BRYANT) Okay. And have you ever received
20 any information to the contrary?

21 A. I have not.

22 Q. Once the Fort Worth Division received the media
23 reports regarding the floating buoys that you described and the
24 communication from the International Border Waters Commission,
25 was the -- this project assigned to you, personally?

1 A. Yes.

2 Q. Who else, if anyone, was also assigned responsibility
3 for this project relating to the floating buoys?

4 A. So my chief has worked in tandem with me on this.

5 Q. And when you refer to your chief, are you -- "chief,"
6 are you referring to Mr. -- is it Lebstock?

7 A. Mr. Neil Lebsock.

8 Q. Lebsock. Thank you. In the course of -- strike
9 that.

10 What's the first thing you did with respect to
11 your investigation related to the floating buoys, aside from
12 read the news -- the public media reports you described, and
13 the communication or document from the International Border
14 Waters Commission?

15 A. So -- and this is typical, is to check and see if
16 there are any permits that may -- or active projects that may
17 be in the -- at that location or in the vicinity of that
18 location.

19 Q. And did you do that in early July 2023?

20 A. I did that after July 10th, 2023.

21 Q. Okay. And I think your determination is described in
22 your declaration that you did not locate any permits or active
23 projects relating to the floating buoys; is that correct?

24 A. That is correct.

25 Q. And what's the next thing that you did with respect

1 to your investigation of the reports with respect to the
2 floating buoys in the Rio Grande River?

3 A. So I employed various remote sensing tools to
4 understand the conditions at the sites.

5 Q. Could you describe what you -- what remote sensing
6 tools you're referring to?

7 A. That would be the available LIDAR data. Also,
8 topographic maps. I would say in -- in some cases, verify if
9 there is a Section 10 water under the Rivers and Harbors Act of
10 1899, but, well, that's already known. Various oth- -- you
11 know, make sure that the -- are we still -- sorry. Are we
12 still on the remote sensing?

13 Q. Yes.

14 A. Okay. So there's various layers and tools that we
15 have that include the LIDAR data, and it would be various
16 aspects of LIDAR data. Some of it doesn't all display the same
17 thing, but various other layers may give us better granularity.
18 So it's typical to review all that, and I did that in this --
19 in this case as well.

20 Q. Approximate --

21 A. Also --

22 Q. Sorry. Go ahead and finish your answer.

23 A. Also checked on -- I did a cross river profile at
24 Shelby Park, and I believe I did one where the buoys are as
25 well. And so that cross river profile from, you know,

1 somewhere upland on the east side of the riverbank typically --
2 typically gives us the relief at the riverbank, and the relief
3 at the riverbed all the way across. So it's just a better way
4 of having a picture of what conditions are on the site.

5 **Q. And what tools are used to do such a cross river**
6 **profile?**

7 A. In this case, a publicly available tool, such as
8 Google Earth can be employed to do that.

9 **Q. Okay. And what, if anything, relevant to your**
10 **investigation did you learn from doing the cross river profile**
11 **with respect to the Shelby Park area?**

12 A. There was -- there was a disturbance there -- well, I
13 should say there was an impact to the Rio Grande in that
14 location where a portion of the channel had been filled between
15 an island in the Rio Grande, and the bank on the United States
16 side of the Rio Grande River. And so I verified that the
17 bottom elevation of the river was the same in the main river
18 channel as was previously present in the channel that's been
19 filled now.

20 **Q. Okay. And how did you determine that in the Shelby**
21 **Park area there had been some filling of a portion of the**
22 **river?**

23 A. Initially, that was in the IBWC's document to us.

24 **Q. Okay. Was there anything else that you did that**
25 **verified that?**

1 A. We conducted a site visit on the 13th of July where I
2 could confirm firsthand the fill had taken place in that
3 location.

4 **Q. Anything else?**

5 A. Could you be more specific?

6 **Q. Was there anything else that -- that caused you to**
7 **conclude that -- that there had been some filling of an area**
8 **near Shelby Park?**

9 A. So to clarify, we're talking about just at Shelby
10 Park?

11 **Q. Yes. Right now. I'll ask you about the actual buoy**
12 **side in a minute.**

13 A. So I believe the document that was supplied to us
14 with IB- -- from IBWC and our site visit was, you know, the
15 confirmation of that through the site visit was the only thing.

16 **Q. Okay. Now, if I understood you correctly, you think**
17 **you also did a cross river profile or may have done one with**
18 **respect to the actual location where the -- the buoys were**
19 **located in the river that you actually saw on July 13th, 2023;**
20 **is that correct?**

21 A. Correct.

22 **Q. Did you -- were any documents created as a result of**
23 **these profiles that you did either at the Shelby Park area or**
24 **at the site of the floating buoys?**

25 A. Yes.

1 Q. What are those documents?

2 A. They are KMZ files.

3 Q. Okay. Could you explain what that means?

4 A. Well, using the -- the Google Earth -- the publicly
5 available Google Earth app, you can save and -- the profile and
6 various other data to a single file called a KMZ file, and so
7 that packaged file was saved to the project file.

8 Q. Okay. And so that's within your project file here at
9 the Fort Worth Division now?

10 A. Yes.

11 Q. Okay. As a result of any cross river profile that
12 you did at the location where the floating buoys are currently
13 located, what, if any, information did you get?

14 A. So doing these -- these elevation profiles like that
15 is routine for me. It just confirmed where the riverbanks are
16 in relation to the other aerial data and remote sensing data
17 that we have.

18 Q. Okay. And do you recall anything in particular that
19 you learned about the site where the floating buoys are
20 currently located?

21 A. So do you mean in the context of the elevation
22 profile?

23 Q. It would include that, yes.

24 A. So you've got to be more specific than that, so I
25 mean...

1 Q. I'll do my best.

2 A. Okay.

3 Q. So as I understand it, you used LIDAR topographic
4 maps and may have used Google Earth to get information about
5 the Rio Grande River at the area where the floating buoys are
6 located; is that correct?

7 A. That's correct.

8 Q. And what did you learn from the -- from your work
9 with respect to those tools before you went to the actual site?

10 A. So much like the -- much like previously, it confirms
11 the -- where the approximate riverbanks are, and they match up
12 with the aerials, the actual aerials that we're able to -- to
13 see, satellite imagery we're able to see. And it shows us the
14 elevation of the riverbed as you travel across the width of the
15 river, take a cross section through the river.

16 Q. Okay. And do you recall any- -- anything,
17 specifically, that you learned about that site through using
18 those tools?

19 A. Nothing that we didn't already know. That there's
20 water present, there's a, you know, riverbed elevation present,
21 you know, that changes somewhat acro- -- as you travel across
22 the river, as you would expect.

23 Q. Okay. Anything else?

24 A. No.

25 Q. All right. Your declaration indicates that you went

1 to the -- to sites in Maverick County, Texas on July 13th,
2 2023; is that correct?

3 A. Correct.

4 Q. How long were you there?

5 A. Approximately three to three and a half hours.

6 Q. And was all of that time at or near the -- the bank
7 of the Rio Grande River or was some time either in Eagle Pass
8 or elsewhere?

9 A. There was a -- a certain amount of time spent
10 traveling.

11 Q. Approximately how much?

12 A. 30 minutes.

13 Q. Okay. And did you spend a portion of that period at
14 or near Shelby Park?

15 A. Yes.

16 Q. Approximately how much time did you spend at or near
17 Shelby Park?

18 A. 45 minutes to an hour and 15 minutes.

19 Q. And when you went on that site visit, who did you
20 meet with aside from Mr. Lebsock, who I understand accompanied
21 you?

22 A. We met with Mario Gomez from the IBWC. Later,
23 Mr. Gomez's counterpart, Mexican counterpart, crossed into the
24 United States, and he met up with us.

25 Q. And what was his name?

1 A. His first name is Enrique. I don't know his last
2 name.

3 Q. Was he introduced to you?

4 A. He was.

5 Q. Did you meet with anybody else besides the persons
6 you've already named?

7 A. No.

8 Q. Did you meet with anybody from the State of Texas,
9 Texas Department of Public Safety or any other agency of the
10 State of Texas?

11 A. No.

12 Q. Did you make any effort to meet with anybody from the
13 State of Texas in connection with that site visit?

14 A. No.

15 Q. Why not?

16 A. At the time, it was a preliminary investigation and
17 we were still gathering information, and that wasn't a part of
18 our agenda for the day.

19 Q. Prior to that site visit, did you or anybody else
20 from the Fort Worth Division, to your knowledge, get in touch
21 with the State of Texas or any agencies or representatives of
22 the State of Texas in connection with the matter of the
23 floating buoys in the Rio Grande River?

24 A. So I did not. I can't speak for others.

25 Q. Well, have you been told about anybody else doing

1 that?

2 A. I have not.

3 Q. Okay. Have you received any reports, by any means,
4 that someone from the Fort Worth Division did get in touch with
5 the State of Texas prior to the site visit?

6 MR. LYNK: Object to form.

7 You can answer.

8 A. No.

9 Q. (BY MR. BRYANT) So there's a portion of the visit
10 that related to Shelby Park, and a portion that related to the
11 portion of the river where the floating buoys were located.
12 Did you view or inspect any other portions of the Rio Grande
13 River in that site visit?

14 A. No.

15 Q. About what is the distance between the Shelby Park
16 area that you visited on July 13th, 2023 and the site of the
17 floating buoys in the Rio Grande that you also visited on that
18 date?

19 A. Approximately two to two-and-a-half miles.

20 Q. Do you know where the U.S. Customs Border Patrol
21 ports of entry are in or near Eagle Pass, Texas?

22 A. You're referring to the controlled points of entry
23 between --

24 Q. Yes, sir.

25 A. -- the United States and Mexico?

1 Q. Yes, sir.

2 A. Approximately, I'm aware.

3 Q. Okay. Approximately, what is the distance between
4 the port of entry nearest the site of the floating buoys, and
5 the site of the floating buoys?

6 MR. LYNK: I'll object as beyond the scope of
7 the limited subject matter the court authorized today, but I'm
8 not giving you instruction, so you can answer.

9 A. Well, I have not measured that distance, so it would
10 be total speculation.

11 Q. (BY MR. BRYANT) Okay. When you were at the Shelby
12 Park area on July 13th, 2023, did you observe any commercial
13 navigation in the Rio Grande River at that site?

14 A. I'm not aware of any.

15 Q. Okay. When you were at the site of the floating
16 buoys, two to two-and-a-half miles downstream from the Shelby
17 Park site, did you observe any evidence of commercial
18 navigation at the floating buoy site?

19 A. I'm not aware of that.

20 Q. Have you ever received any information or reports of
21 any commercial navigation at or near the current site of the
22 floating buoys in the Rio Grande River that are subject of this
23 case?

24 MR. LYNK: Object to form.

25 You can answer.

1 A. Could you answer -- could you repeat that -- the
2 first part of that, at least, so...

3 Q. (BY MR. BRYANT) Okay. And I'm happy anytime when
4 I -- if I don't make myself clear to repeat and/or try to
5 clarify my question. I understand that you did not observe any
6 commercial navigation or evidence of commercial navigation at
7 the floating buoy site that day. I'm now asking whether or
8 not, through other means, you have received any information
9 regarding any present, past or future commercial navigation at
10 that floating buoy site?

11 A. So I -- I'm not aware of that personally in my role
12 in the Regulatory Division.

13 Q. Okay.

14 A. So...

15 Q. And so I'm -- so we're clear, when I -- when you say
16 "personally," are you including any reports you may have
17 received from other people, either written or in other forms?

18 A. Correct.

19 Q. Okay. Now, when you met with Mr. Mario Gomez on
20 July 13th, 2023, what discussion did you have?

21 A. We discussed his -- obviously, his document that he
22 supplied to the Corps and where he took the photographs, and
23 his -- his regurgitation of what he observed at the time. We
24 also discussed, obviously, some logistics about where we were
25 going to go or the plan of where we -- where we might go during

1 the site visit, and what we might see at various points on the
2 site visit.

3 Q. Have you read Mr. Gomez's declaration in this matter?

4 A. I have not.

5 Q. Okay. Do you recall anything else of your
6 conversation with Mr. Gomez on that occasion beyond what you've
7 already told me? And let me clarify. When I say "your
8 conversation," that would include Mr. Lebsock's conversation
9 with Mr. Gomez or anyone else who was present at the time and
10 you witnessed.

11 A. So I -- I do recall some conversation between his
12 counterpart, Mr. Gomez's counterpart from Mexico. I wasn't
13 really a party to this -- I didn't participate in this
14 conversation. I don't believe Mr. Lebsock participated in the
15 conversation either, but I do remember Mr. Gomez translating,
16 you know, his -- Enrique's Spanish, saying -- you know, giving
17 his observations about what he observed from the Mexican side
18 of the river, and photographs that he had taken. Other than
19 that, I don't remember specifics.

20 Q. Okay.

21 A. Yeah.

22 Q. If I understand correctly, there was a first part of
23 the conversation that did not include the gentleman you refer
24 to as Enrique; is that correct? A part of the conversation
25 before he arrived in Texas?

1 A. Oh, yes.

2 Q. Okay. And who was present for that conversation?

3 A. Myself, Mario Gomez and Mr. Lebsock.

4 Q. Okay. No one else was present for any part of that
5 conversation?

6 A. Are you referring to a specific conversation or
7 just...

8 Q. No. Just the --

9 A. No, I don't --

10 Q. -- any conversations that you had with Mr. Gomez and
11 Mr. Lebsock on that occasion.

12 A. That's -- that's correct.

13 Q. Okay. And about how much later was the conversation
14 that included the gentleman referred to as Enrique?

15 A. I don't know for sure, but I'm going to say about an
16 hour.

17 Q. Okay. Was that also at the Shelby Park site?

18 A. It was outside the Shelby Park site.

19 Q. Okay.

20 A. Yeah.

21 Q. What's your best description of where it occurred?

22 A. On the -- on the street outside the Shelby Park site.

23 Q. Okay. And who was present for that conversation, if
24 anyone, besides Mr. Gomez, Mr. Lebsock, Enrique and yourself?

25 A. No one.

1 **Q. Okay. And what was conveyed to you by Mr. Gomez that**
2 **had been said by the gentleman referred to as Enrique?**

3 A. So you have to understand when he's translating from
4 Spanish, my Spanish is rudimentary, so I'm getting bits and
5 pieces, and Mr. Gomez is giving truncated, you know, account of
6 what Enrique is telling us. Basically, he's just getting --
7 giving some information about Enrique's observation from the
8 other side about how he saw and heard construction activity
9 and -- but I don't remember over what time frame Enrique was
10 referring to.

11 And also, he said something about that there may
12 be some -- he couldn't identify a noise some piece of equipment
13 was making, and I remember some conversation going back and
14 forth about -- that didn't involve me, about what piece of
15 equipment or multiple pieces of equipment that might be
16 involved in that.

17 There was also some conversation about the
18 Mexican side of the IBWC using -- or potentially use a drone,
19 but I have no idea if that was previous use or planned use,
20 so...

21 **Q. I think you mentioned earl- -- strike that.**

22 **Is there anything else that you can recall of**
23 **that conversation?**

24 A. I don't recall anything -- yeah.

25 **Q. I think you mentioned that some information that**

1 Enrique or others on the Mexican side of the commission had
2 taken some photographs. Were any photographs provided to --
3 either to Mr. Gomez or to the Army Corps of Engineers from the
4 Mexican side?

5 A. I'm not aware of any.

6 Q. Okay. Is that true today?

7 A. I'm not aware of any, that's correct.

8 MR. BRYANT: Why don't we take a short break --

9 MR. LYNK: Sure.

10 MR. BRYANT: -- if that's okay with you?

11 MR. LYNK: Yeah. That's great.

12 THE REPORTER: We're going off the record at
13 10:55 a.m.

14 (Break taken from 10:55 a.m. to 11:05 a.m.)

15 THE REPORTER: We are back on the record. The
16 time is 11:05 a.m.

17 Q. (BY MR. BRYANT) Mr. Shelnutt, I'm looking at
18 Exhibit 2, which is your declaration, and at Paragraph 8, it
19 says, quote, I made a site visit to Eagle Pass to investigate
20 the placement of the floating barrier on July 13th, 2023. Is
21 it correct that that was not the only reason for your visit on
22 that occasion?

23 A. That's correct.

24 Q. And one additional reason was to -- to review the
25 area near Shelby Park?

1 A. That's correct.

2 **Q. Were there any other reasons?**

3 A. Other than to -- excuse me. Other than to view the
4 location where the floating buoys are, those are the two
5 objectives.

6 **Q. Okay. And Paragraph 8 states, in part, quote, We met**
7 **with a U.S. representative and a Mexican representative from**
8 **the International Boundary and Water Commission, and they**
9 **accompanied us on the site visit. Did the Mexican**
10 **representative from the International Boundary and Water**
11 **Commission accompany you and Mr. Lebsock on the site visit to**
12 **the site of the floating buoys?**

13 A. Yes.

14 **Q. And did Mr. Gomez also do so?**

15 A. Yes.

16 **Q. About how long were the group of you at the site of**
17 **the floating buoys on that day?**

18 A. So we were there twice. Okay? Initially, it was
19 just Mr. Lebsock, Mr. Gomez and myself, and then we left to
20 meet Enrique from Mexico, had the conversation we discussed
21 earlier, and then we went back to the site where the floating
22 buoys were. So your question is how long with those two
23 combined?

24 **Q. That was my question, but I'll also ask you, how long**
25 **was each one?**

1 A. Sure. They were approximately the same length,
2 approximately 30 minutes each. I didn't time it, so that's --
3 good.

4 Q. When I first read your declaration, Mr. Shelnutt,
5 when you said, quote, We met with a U.S. representative, I
6 thought that might refer to a member of Congress. But am I
7 correct that you didn't meet with any members of Congress when
8 you had your site visit on July 13th, 2023?

9 A. We met with no members of Congress on that date.

10 Q. Okay. Did you meet with any government officials
11 aside from the ones that you've already named?

12 A. No.

13 Q. Have you met with any Congress people or government
14 officials relating to the floating buoy sites at any other
15 time?

16 A. No.

17 Q. Have you communicated with any government officials
18 or elected officials regarding the floating buoy sites at any
19 other time?

20 A. No.

21 Q. To your knowledge, has anybody in the Corps of
22 Engineers met with elected officials or other government
23 officials regarding the floating buoy sites at any point today?

24 MR. LYNK: Object to form.

25 A. I'm not aware of that.

1 **Q. (BY MR. BRYANT) Do you recall any conversation that**
2 **was had with the Mexican representative referred to as Enrique**
3 **when he was present at the site of the floating buoys on**
4 **July 13th, 2023?**

5 A. The only -- the only communication I can remember
6 that happened between myself and Enrique had to do with his
7 operation of some range-finding equipment and measurement of,
8 you know, the buoys.

9 **Q. Tell me what you recall in that regard.**

10 A. It was simply a -- a struggled, broken Spanish,
11 broken English conversation where he was trying to operate
12 and -- and figure out how to operate and tell me -- ask me how
13 to operate his range-finding equipment.

14 **Q. He had range-finding equipment with him at the time?**

15 A. He had a small range-finding device.

16 **Q. Okay. Did -- did Enrique or you succeed in getting**
17 **any data from the range-finding equipment on July 13th, 2023?**

18 A. Yes.

19 **Q. What data did you get?**

20 A. We calculated the length of the buoy structure at the
21 time at approximately -- and this is very approximately, 450
22 feet.

23 **Q. Anything else that you learned from the range-finding**
24 **equipment?**

25 A. I know that Enrique was trying to ascertain the

1 channel width at that location.

2 Q. What, if any, information did -- did you understand
3 he obtained in that regard?

4 A. I understood that he was successful in gaining some
5 channel width information at that location, but we didn't
6 gather that information.

7 Q. Okay.

8 A. And by "we," I mean myself, and the Regulatory
9 Division here.

10 Q. And you don't recall anything he said as to the width
11 of the channel at that point?

12 A. I don't recall.

13 Q. Did you or anybody else from the Army Corps of
14 Engineers do anything to either measure or estimate the width
15 of the channel of the Rio Grande River at the point where
16 there -- the floating buoys are located?

17 A. There were some mixed conversation about that between
18 Mr. Gomez, Enrique and Mr. Lebsock as well, along the same
19 general lines as I've just described.

20 Q. Well, as you sit here today, do you have access to
21 either a measurement or an estimate of the width of the channel
22 of the Rio Grande River at the point of the floating buoys
23 current site?

24 A. Yes, through our remote sensing tools that we
25 mentioned earlier.

1 Q. And what is that?

2 A. I don't recall the exact width of the channel there.

3 Q. Do you recall the approximate width?

4 A. It would be speculation without looking at my notes.

5 Q. Do you know the current length of the floating buoys,
6 either precise or -- either measured or estimated?

7 A. I do not.

8 Q. In Paragraph 10 of your declaration, which is
9 Exhibit 2, it states that, quote, From the bank, we observed
10 orange spheres with a 4 to 6-foot diameter being installed in
11 shallow water of the Rio Grande with the use of an excavator
12 supported by individuals standing on the riverbed, two
13 airboats, and large type watercraft. Did you do any measuring
14 or estimation of the depth of the water of the Rio Grande where
15 the floating buoys were located on July 13th, 2023?

16 A. The only estimation we did of the water depth at that
17 approximate location was a scale of an individual standing or
18 individual standing in the water against the height of the
19 water on their body.

20 Q. And approximately was -- what was the height of the
21 water based on that estimation?

22 A. Very -- very approximately, knee height to waist
23 height at that time.

24 Q. Okay. So is it correct that what you observed was
25 the -- that the -- the depth of the water at the point where

1 the floating buoys were installed was approximately knee to
2 waist high for an adult person?

3 A. Yes.

4 Q. Would it be fair to say that's, roughly, a foot and a
5 half to three feet?

6 MR. LYNK: Object to form.

7 A. Where the individuals were standing, I could agree
8 with that.

9 Q. (BY MR. BRYANT) Okay. And you didn't make any
10 measurements as to other locations where the floating buoys
11 were?

12 A. No --

13 Q. You had no -- no basis to estimate that?

14 A. No. That's correct.

15 Q. Have you or anybody at the Corps of Engineers made
16 any other measurements or estimates of the depth of the water
17 at the site of the floating buoys currently at any other time?

18 A. I have not. I'm not aware of others.

19 Q. Okay. In Paragraph 10 of your declaration, you
20 mention the presence of an excavator. Is that the machine that
21 is depicted in the photograph on Page 3 of Exhibit 2?

22 A. Yes. It's the piece of equipment with the bucket
23 attached to it.

24 Q. Okay. And did you see any actual excavation or
25 evidence of excavation at or near the site of the floating

1 **buoys on July 13th, 2023?**

2 A. At the time I was present at the site, I did not see
3 that.

4 Q. Okay. Have you ever seen any evidence of excavation
5 in connection with the current site of the floating buoys in
6 the Rio Grande River?

7 A. With regard to the site of the floating buoys, no.

8 Q. Okay. Did you see any evidence of any fill in the
9 Rio Grande River at the site of the floating buoys in Maverick
10 County, Texas on July 13th, 2023?

11 A. From my vantage point, I could not identify a fill in
12 the Rio Grande River.

13 Q. Have you ever received information or seen any
14 evidence of any fill in the Rio Grande River at or near the
15 site of the floating buoys in the Rio Grande River as they're
16 currently located?

17 A. I do not have any information to that effect at this
18 time.

19 Q. Okay. Did you see what you referred to as an
20 "excavator" doing any work at the site of the floating buoys on
21 July 13th, 2023, that did not involve actual excavation?

22 A. So could you repeat that one more time?

23 Q. I'll try.

24 A. Okay.

25 Q. When you were there on July 13th, 2023, did you see

1 the excavator or the machine you just -- you identified as an
2 excavator doing some other work that did not involve actual
3 excavation?

4 A. Yes.

5 Q. And what work did you see that -- that machine or
6 equipment do?

7 A. Transporting buoys from an upstream location, I
8 assume that was on the upland site to the work site in the
9 river to install, you know, another chain of -- of buoys to the
10 existing floating buoys.

11 Q. Okay. So as I -- as I look at the photograph on
12 Page 3, I see a machine that appears to have -- to have what I
13 would call a "bucket" that is of the kind that I've seen used
14 for excavation. If I understand you correctly, you did not see
15 that used for excavation that day, but did you see that bucket
16 used just to transport and place buoys in the river?

17 A. Correct.

18 Q. Did you see it do anything else?

19 A. Not while I was present, no.

20 Q. Okay. Have you ever received any information that
21 any excavator or other equipment was used to do anything at the
22 floating buoy site other than carry and place floating buoys?

23 A. I'm not aware of anything else.

24 Q. Okay. In Paragraph 10 of your declaration, you also
25 mention airboats. Are airboats -- are those the airboats that

1 are depicted in the photograph on Page 3 of Exhibit 2?

2 A. That's correct.

3 Q. And when you refer to an airboat, how -- what would
4 you -- how would you describe that or define it?

5 A. It'd be a vessel with a fan mounted in the rear of
6 the vessel that propels the vessel forward.

7 Q. Okay. And as you understand it, are airboats
8 watercraft that are used where the depth of the water may be
9 shallow or nonexistent, so that you have to have a propeller up
10 out of the water to -- to propel them?

11 A. I'm aware, in my experience with airboats, is they
12 can be used in shallow water.

13 Q. Okay. And did that appear to be the kind of water
14 that the two airboats were operating in on July 13th, 2023, at
15 the site of the floating buoys?

16 A. Well, the airboats were in various positions while I
17 was there. Some of it may be characterized as shallow. Other
18 depths, I'm not aware of according to where they were
19 positioned at the time. Yeah.

20 Q. Okay. You also referred to in Paragraph 10 of your
21 declaration that's Exhibit 2, quote, barge-type watercraft,
22 unquote. Is that -- is the boat that you refer to as a
23 "barge-type watercraft" also depicted in the photograph on
24 Page 3?

25 A. It is.

1 Q. Is it -- strike that.

2 What, if anything, did you observe that
3 watercraft doing on July 13th, 2023?

4 A. The barge-type watercraft was, I believe, stationary
5 the entire time I was there. So I didn't -- I assumed it was
6 stabilizing the buoy system at that point in the structure, but
7 I don't know what it was doing, so...

8 Q. Okay. On July 13th, 2023, did you see any other
9 watercraft or types of watercraft than those depicted in the
10 photograph on Page 3 of Exhibit 2?

11 A. I don't recall.

12 Q. Could you describe what you observed of the use of
13 the land on the Texas side at the site of the floating buoys on
14 July 13th, 2023?

15 A. From -- from my vantage point during the site visit
16 on that date, I could see that there was concertina wire along
17 the riverbank. There was a portion immediately land side of
18 the river, and land side of that concertina wire that appeared
19 to be used as a -- as a road, but I don't know how -- I don't
20 know if that road connected anywhere. More concertina wire, I
21 could see upstream and downstream in various positions.

22 Q. Okay.

23 A. Yeah.

24 Q. Did you see any evidence at all of any commercial
25 activities on the Texas side of the river at the floating buoy

1 site on July 13th, 2023?

2 A. I'm not aware of any.

3 Q. And you stood over there, right?

4 A. I stood?

5 Q. On the Texas side of the river as you made your
6 observations?

7 A. That's correct.

8 Q. And looking up and down the river, did you see any
9 docks or piers or any other evidence of -- of commercial
10 navigation at that floating buoy site?

11 A. I don't recall seeing anything of that nature.

12 Q. As you looked over to the Mexican side of the
13 Rio Grande at the floating buoy site, if you did, did you see
14 any evidence of commercial activity?

15 A. I don't recall seeing anything of that nature there
16 either.

17 Q. Have you ever, at any other time, seen or received
18 any evidence of any commercial activities at or near the
19 floating buoy site on the Texas side of the Rio Grande River?

20 A. No.

21 Q. And you mentioned that there's concertina wire on
22 that side of the Rio Grande River. How did you avoid or get
23 past that, or did you?

24 A. We did not.

25 Q. Okay. So about how far away from the bank of the

1 river were you and Mr. Gomez and Mr. Lebsock and the gentleman
2 we refer to as Enrique when you made your observations on
3 July 13th, 2023?

4 A. My estimate is 50 to 75 feet.

5 Q. Is it correct that you did not make any effort to get
6 closer access to the work on that date?

7 A. That's --

8 Q. "You," meaning all four of you?

9 A. That's correct.

10 Q. Now, had -- prior to your site visit on July 13th,
11 had you concluded that the portion of the river where the
12 floating buoys were located was subject to the jurisdiction of
13 the Army Corps of Engineers?

14 A. Yes.

15 Q. How did you do that, how did you arrive at that
16 conclusion?

17 A. The Rio Grande at that location is a Section 10 water
18 under the Rivers and Harbors Act of 1899, and is within our
19 jurisdiction under that act.

20 Q. And my question --

21 A. Additionally, it is a perennial water of the United
22 States under Section 404, The Clean Water Act.

23 Q. How did you conclude, prior to the site visit, that
24 the location where the floating buoys are located was subject
25 to the jurisdiction of the Corps of Engineers under Section 10

1 **of the Rivers and Harbors Act of 1899?**

2 MR. LYNK: I'll object that this is beyond the
3 scope of what the Court authorized limited discovery for today,
4 but you can answer the question.

5 A. So the Rio Grande River is on an established list of
6 navigable waters within Texas -- within our area of
7 responsibility at the Fort Worth District.

8 **Q. (BY MR. BRYANT) Okay. Anything else?**

9 A. That list is derived from studies that indicate
10 whether a water body is a Section 10 navigable water.

11 **Q. Okay. Anything else?**

12 A. No.

13 **Q. Have you ever seen or read a -- any study related to**
14 **the portion of the Rio Grande River where the floating buoys**
15 **are located?**

16 A. We -- have I ever seen or read?

17 **Q. Yes.**

18 A. That's the question?

19 **Q. Yes.**

20 A. Yes.

21 **Q. Okay. What -- could you describe that?**

22 A. Yes. It would be the study that was performed, and I
23 don't remember the date, that codifies the Rio Grande River as
24 a Section 10 traditional navigable water under the Rivers and
25 Harbors Act of 1899.

1 Q. Okay. Have you read that study?

2 A. I have not read that study in its entirety.

3 Q. When did you partially read it, if at all?

4 A. So sometime, and this is very approximate, after -- I
5 believe, after July 13th.

6 Q. And what, specifically, do you recall from your
7 partial reading of the study after July 13th, 2023?

8 A. Confirming the title and the date, and, generally,
9 the contents.

10 Q. Could you explain what you mean by "the title"?

11 A. Verifying that that was a document -- correct
12 document.

13 Q. Okay. And what title did it have that confirmed to
14 you it was the correct document?

15 A. I don't remember the specific title of the document.

16 Q. Okay. And you also said you read the dates. What
17 dates do you refer to?

18 A. The date the document would have been generated.

19 Q. Okay. And what was that?

20 A. I don't recall the exact date.

21 Q. What do you recall as the date, approximately, if
22 anything?

23 A. That'd be total speculation now.

24 Q. Okay.

25 A. Yeah.

1 Q. And what do you recall of the portion of the study
2 that you read?

3 A. I didn't read specific technical data in the report.

4 Q. What do you recall of what you did read?

5 A. There were maps presence -- present. It was signed
6 and dated.

7 Q. When you say the -- "it was signed and dated," are
8 you referring to the maps or the study?

9 A. The study.

10 Q. Okay. But you don't recall the approximate date?

11 A. I do not.

12 Q. Okay. Did you determine that the study that you
13 looked at after July 13th, 2023, was a study that specifically
14 related to the portion or segment of the Rio Grande River where
15 the floating site -- buoys are sited at currently?

16 A. Yes.

17 Q. What did it say that caused you to come to that
18 conclusion?

19 A. It gave a -- the map portion of it that identified
20 the Rio Grande in its location and its length.

21 Q. Okay. So was this a study that concluded that the
22 entire length of the Rio Grande was covered?

23 A. Not the entire length.

24 Q. Okay. What part was not covered, according to the
25 study?

1 A. I'm not entirely sure.

2 Q. Aside from looking at a map that showed it as
3 covered, do you recall any text that you read that stated that
4 any portion of Maverick County was covered by the study's
5 conclusions?

6 MR. LYNK: Object to form.

7 You can answer.

8 A. So -- so as -- as previously discussed, you know, my
9 objective for encountering this document was to confirm that
10 we -- we actually possessed the document locally. And so I did
11 not read any technical aspects of the document.

12 Q. (BY MR. BRYANT) Did you obtain any information as to
13 who were the authors of the document? And the document I'm
14 referring to is the study that you looked at.

15 A. No.

16 Q. Do you know if that document or study was prepared in
17 the 21st century?

18 A. Meaning after?

19 Q. After the ball dropped on New Year's 2000?

20 A. Of -- my under- -- that'd be speculation too. I'm
21 not --

22 Q. Okay. Do you know if that study was prepared in
23 the -- in the 20th century?

24 MR. LYNK: Object to form.

25 A. I'm not entirely sure, but I believe so.

1 Q. (BY MR. BRYANT) Okay.

2 A. Yeah.

3 Q. Is it fair to say that in concluding that the area
4 where the floating sites -- the floating buoys are currently
5 sited, you're relying on the list that the Army Corps of
6 Engineers compiled, and the existence of studies by unknown
7 persons that the Corps keeps as backup for that list?

8 A. That's correct.

9 Q. And you don't have any personal knowledge of that
10 otherwise?

11 A. So could you clarify, any personal knowledge of?

12 Q. Of whether that body of water is -- where the -- the
13 buoys are located is subject to Section 10 of the Rivers and
14 Harbors Act of 1899?

15 A. So the knowledge I do have is the long established
16 list that we use on a daily basis to -- to refer to traditional
17 navigable waters under Section 10 of the Rivers and Harbors Act
18 of 1899. So I trust and affirm that that list is accurate.

19 Q. Okay. And you didn't do anything else other than
20 what you've described to arrive at the conclusion of coverage?

21 A. That's correct.

22 Q. Okay. Based on what you observed on July 13th, 2023,
23 and any other information that you have, do you know if the
24 floating buoys that are the subject of this action are in any
25 way structurally built into the bed of the Rio Grande River?

1 A. I don't have any firsthand knowledge of how -- no.

2 Q. Okay. Do you have any secondhand knowledge?

3 A. No.

4 Q. Okay. So you don't know whether the floating buoys
5 are part of some structure in the bed of the river there?

6 A. We don't have information to make those
7 determinations, no.

8 Q. Okay. Do you have any knowledge either first- or
9 secondhand as to whether or not the floating buoys at that site
10 are temporary or permanent?

11 A. So again, we don't have any -- any information that
12 makes us -- so we can make a determination to that effect.

13 Q. And is it correct that as of this date, to your
14 knowledge, the Army Corps of Engineers has not contact- --
15 contacted the State of Texas or any representative thereof to
16 get any information about whether the site of the floating
17 buoys is one in which there's been any kind of structural
18 attachment to the riverbed or any kind of building?

19 MR. LYNK: Object to form.

20 You can answer.

21 A. So I don't have any knowledge outside of our
22 Regulatory Division here in the Fort Worth District. I have
23 not had any contact to that effect, so...

24 Q. (BY MR. BRYANT) Okay. And I just want to be sure I
25 understand your answer. You said that there's no knowledge

1 outside of the Regulatory Division. Is there knowledge on that
2 subject within the Regulatory Division by people other than
3 yourself personally, to your knowledge?

4 A. I'm not aware of it.

5 Q. Okay. And is it also true that to the best of your
6 knowledge, there's nobody in the Fort Worth Division of the
7 Army Corps of Engineers who has sought any information from the
8 State of Texas about whether the floating buoys are temporary
9 or permanent?

10 MR. LYNK: Object to form.

11 You can answer.

12 A. I don't have that information.

13 MR. BRYANT: Let's go off the record for a
14 second.

15 THE REPORTER: Going off the record at
16 11:41 a.m.

17 (Break taken from 11:41 a.m. to 11:42 a.m.)

18 THE REPORTER: We are going back on the record
19 at 11:42 a.m.

20 Q. (BY MR. BRYANT) Mr. Shelnutt, based on what you saw
21 on July 13th, 2023, or any other information you have, do you
22 have any reason to believe that the floating buoys at their
23 current site have altered or modified the course of the Rio
24 Grande River?

25 A. So I don't have any information to understand that

1 the course of the river or mod- -- modification of the course
2 of the river has occurred.

3 Q. Based on what you observed on July 13th, 2023, or
4 from any other sources, do you have any reason to believe that
5 the floating buoys, as they're currently located, interfere
6 with any navigation up and down the Rio Grande River?

7 A. Yes.

8 Q. What is that reason?

9 A. So if you refer to 33 CFR 322.3, I believe,
10 Activities Requiring Permits. So -- and I'm paraphrasing here.

11 Q. Okay.

12 A. So the navigable capac- -- navigable capacity of the
13 river, if it's affected by work or structures in the river,
14 requires a permit. So that being said, for example, if a -- an
15 applicant were to come to us, and they have, for work in, over
16 or under a Section 10 water, under the Rivers and Harbors Act
17 of 1899, that requires a permit, because even a structure under
18 the river, that was tunneled under the river that didn't impact
19 the water course at all, but it was under the river, that
20 requires a permit too, because that's considered to affect the
21 navigable capacity of the river.

22 So in this case we have a -- a structure of
23 floating buoys that's actually in the water, and could present
24 a -- a -- an effect to navigation or the navigable capacity of
25 the water body.

1 Q. I understand that you -- you have been trained and --
2 and no doubt spent a lot of time being aware of and applying
3 the Corps of Engineers regulations. My question was more of
4 a -- just a common sense question that does not apply to those
5 or to the technical term "navigable capacity." And it is
6 whether the buoys, as they're currently located in the Rio
7 Grande River, do you have any reason to believe they actually
8 interfere with any navigation up and down the river?

9 A. So -- so I have to -- I have to rely on, in my
10 capacity in the -- in the Regulatory Division here in Fort
11 Worth, I have to rely on my capacity as a regulator and refer
12 to the regulations. Also, I -- I know very little, and
13 certainly not an expert about navigation or -- or all the
14 various expertise that may go into determining if something is
15 or is not, on a layman's basis, an obstacle. So I don't think
16 I can speak to that, so...

17 Q. Okay. Now, you used the term "navigle-" --
18 "navigable capacity." What do you understand that to mean?

19 A. Effects to navigation. So in this case, I cannot say
20 that there's no effect to the navigable capacity of the river
21 due to the structure that we're discussing in the river at that
22 location.

23 Q. Based on what you have observed and otherwise
24 learned, do you have a reason to believe that the floating
25 buoys, as they are currently sited, actually and substantially

1 **interfere with any navigation up and down the Rio Grande River?**

2 MR. LYNK: I'm going to object to form.

3 You can answer.

4 A. So I'll state again, in my capacity as a regulator, I
5 have to refer to and follow the regulation in our normal
6 capacity as regulators. And, you know, requiring -- or
7 authorizations for such structures, this is a -- the typical --
8 this may not be a typical one in its -- in its current form
9 we're discussing today, but typically, when people come to us
10 or we -- we determine that there's a structure in a navigable
11 water, you know, we evaluate the capacity of it to obstruct or
12 potential to obstruct navigation in that area, so I would see
13 as no different here.

14 MR. BRYANT: Objection, nonresponsive.

15 Q. (BY MR. BRYANT) Have you or anybody else at the
16 Corps of Engineers, to your knowledge, ever received any report
17 or complaint that the floating buoys have caused a problem of
18 any kind for any watercraft going up and down the Rio Grande
19 River?

20 A. I'm not aware of that.

21 Q. Okay. If somebody places a single buoy in the Rio
22 Grande River, is it your understanding that that requires a
23 permit from the Corps of Engineers?

24 A. That's not enough information for me to make a
25 determination on it.

1 Q. What additional information would you need?

2 A. Method of placement, purpose of the placement, how
3 it's anchored, the location, various other aspects of it.
4 Is -- is it permanent or temporary, for example, so...

5 Q. In your conversation with Mario Gomez or the
6 gentleman we've referred to as Enrique, did they express any
7 concern to you or Mr. Lebsock, to your knowledge, about the
8 floating buoys actually interfering with any navigation in the
9 Rio Grande River?

10 A. I know that there was concern, but I don't know the
11 nature of the concern.

12 Q. Have you or anybody else at the Army Corps of
13 Engineers, to your knowledge, received any complaints about the
14 floating buoys of a political nature related to Mexico's
15 reaction to them?

16 A. So could you -- could you state that again?

17 Q. Okay. Have you or anybody else at the Corps of
18 Engineers, to your knowledge, received any communications of a
19 political nature from any representatives of Mexico,
20 representatives in the U.S. or the government of Mexico about
21 political problems caused by the existence of the floating
22 buoys in the Rio Grande River?

23 MR. LYNK: I'm going to object that that
24 question is beyond the scope of the authorized discovery topic,
25 as well as very compound.

1 You can answer, if you know the answer.

2 A. I'm not aware of that.

3 Q. (BY MR. BRYANT) Have you ever seen any evidence
4 of -- or heard any reports of any kind of lawful cross-river
5 traffic at the site of the floating buoys in Maverick County on
6 the Rio Grande River?

7 A. I'm not aware of that.

8 Q. Are you aware of unlawful traffic across the Rio
9 Grande River at the site of the floating buoys before the buoys
10 were there?

11 A. No.

12 Q. Are you aware that the floating buoys in Maverick
13 County are within a disaster area declared by the governor of
14 Texas related to illegal drug smuggling, human trafficking,
15 terrorist infiltration and illegal immigration?

16 MR. LYNK: Object as beyond scope.

17 You can answer.

18 A. I'm not aware of that.

19 Q. (BY MR. BRYANT) Are you aware that the Department of
20 Homeland Security has determined that the area where the
21 floating buoys were located is a area of intensity for drug
22 smuggling?

23 MR. LYNK: Same objection. You can answer.

24 A. I'm not aware of that.

25 Q. (BY MR. BRYANT) If you were aware of it, would it

1 make any difference to you in your -- in your assessment of
2 whether or not the floating buoys require a permit under the
3 Section 10 of the Rivers and Harbors Act?

4 A. I'm not aware that it would at all.

5 Q. Yeah. Based on what you observed and otherwise know
6 about the floating buoys in the river at -- that are the
7 subject of this lawsuit, based on the current location, would
8 you refer to them as a "pier"?

9 A. No.

10 Q. Would you refer to them as a "wharf"?

11 A. No.

12 Q. Would you consider them a "breakwater"?

13 A. No.

14 Q. Would you consider them a "bulkhead"?

15 A. No.

16 Q. Would you consider them a "weir"?

17 A. No.

18 Q. Would you consider them a "dolphin"?

19 A. No.

20 Q. Would you consider them a "jetty"?

21 A. No.

22 Q. Would you consider them a "boom"?

23 A. No.

24 Q. Have you ever either done any work yourself or
25 received any information regarding the historical uses of the

1 Rio Grande River for commercial navigation anywhere in the
2 vicinity of the current location of the floating buoys?

3 A. No.

4 Q. If somebody applies for a permit from the Corps of
5 Engineers for a project, generally, of -- of the nature of the
6 floating buoys, as you understand them, approximately what time
7 range would you think would be necessary for the Corps to act
8 on such permit?

9 A. Well, first, I'd have to understand what the
10 applicant was seeking to do within the water body, and we
11 simply don't have enough information to really respond to
12 that -- that question accurately for time frames, because it --
13 it could go, depending if it -- if it fit under a certain
14 regulatory or permitting pathway, it could take less time. Or
15 if it had to -- had to have more review, it could take a little
16 longer time frame. But at this point, since we don't have an
17 application with information about the project, various aspects
18 of the project, we simply don't have a -- I don't see how we
19 can answer that question right now. I'm sorry.

20 Q. Okay.

21 A. Yeah.

22 Q. And I certainly understand you can't answer that
23 question with precision. I don't even want you to -- I'm not
24 even asking you about that specific project. But typically,
25 when you say "less time" or "more time," what kind of range is

1 that for processing and issuing a permit by the Corps of
2 Engineers for a project very generally similar to the floating
3 buoys?

4 A. Well, I can give you -- maybe the best way to answer
5 this is two possible scenarios, and I'm not indicating that
6 it's one of the two at all --

7 Q. Fair enough.

8 A. -- or something else. If someone approached us for a
9 project -- proposed a project in waters such as the Rio Grande,
10 if the impact was of such a nature, it might fit under a -- one
11 of the nationwide permits, which we're required to give a
12 response within 45 to 60 days of the -- of when we consider the
13 application federally complete. If it won't fit under -- in
14 one of the existing nationwides, then it would go to what's
15 called a standard individual permit. There is a 120-day goal
16 of rendering a decision once it's considered federally
17 complete.

18 Q. Thank you. And I -- I know that that term "federally
19 complete" is, kind of, a term of art. Could you explain for
20 somebody like me who's not really familiar with it all that is
21 involved in going from an initial expression of interest and
22 getting a permit, to getting a permit that is, quote, federably
23 [sic] -- federally complete, unquote?

24 A. Sure. Well, we would need all the required, you
25 know, information about the project, dimensions, cubit yards of

1 fill, acres of fill, linear feet of fill, if it's fill, all the
2 maps and figures that go with that, plus, you know, the text
3 description that would go with that. We'd also need an
4 understanding of, you know, is there compensatory mitigation
5 involved or is there none, state that. You know, if it -- if
6 it rose to a limit requiring that.

7 Understand, I'm simply describing it in general
8 here. I'm not speaking to what's -- what may be required for
9 the floating buoys at this location at this time. Our review
10 would also include things like, you know, the Endangered
11 Species Act, would there be an impact to federally listed
12 species at this location. That could entail coordination with
13 the U.S. Fish and Wildlife Service.

14 Also the historic -- I'm sorry -- the -- yes,
15 the Historic Preservation Act. There needs to be a review
16 there. That's routine for that to happen. That'd be
17 Section 106 of the Historic Preservation Act. And that's
18 typical for all -- those sorts of reviews are typical for both
19 general permits or nationwide permits, and standard individual
20 permits too.

21 So in general, that's what is required. There's
22 more detail, depending on the nature of the project. I mean,
23 you could imagine some of these projects are simple in nature,
24 and they don't require a lot of elaboration if they're simple
25 in nature. Some are more complex and require a lot of

1 elaboration or clarification and coordination with other
2 federal -- could entail coordination with other federal and
3 state agencies.

4 **Q. So all that you just described to me are things that**
5 **happen prior to the time that an application is deemed**
6 **federally complete?**

7 A. Not all of that, but it does affect our ability to
8 render a decision. So you can still -- there can still be --
9 determined to be federally complete, which is a lower bar than
10 being able to make a decision. So for example, if -- if we had
11 everything that we needed in this theoretical project, but
12 there still needed to be coordination with, say, the Fish and
13 Wildlife Service for a potential impacted list of species,
14 Fish and Wildlife Service would be coordinating with us, we
15 would be coordinating with them. Whoever the lead federal
16 agency is would be coordinating with them. And then they would
17 have to go through their process.

18 So we could be federally complete, but we still
19 have to wait on their process till they're -- till they're done
20 with that, and that usually entails a biological assessment
21 about the project and they would -- it may entail them
22 producing a biological opinion, but not always necessary. But
23 whatever decision of coordination, we have to wait for the end
24 of that to play out.

25 And if that's all we're waiting on, then we can

1 go ahead and render our federal decision in writing right
2 immediately after that. And that would be the same for
3 coordination, say, under the Historic Preservation Act --
4 National Historic Preservation Act, too, if we required that
5 kind of coordination.

6 Q. Okay. If I understand you correctly, and please
7 correct me if I'm wrong, first, the applicant has to go through
8 the steps of providing all of the information that is required
9 to fully and accurately describe the proposed project, and also
10 has to get a -- some type of study or information relating to
11 the biological or fish and wildlife impacts of the proposed
12 project, and the potential Historic Preservation Act
13 implications of the proposed project before it can reach the
14 stage of being, quote, federally complete?

15 MR. LYNK: Object to form.

16 Go ahead.

17 Q. (BY MR. BRYANT) Is that correct?

18 A. Not entirely.

19 Q. Okay. Could you correct me, please.

20 A. I'll attempt to. So yes, you were correct in that
21 the applicant's responsibility is, is give us a certain amount
22 of information, you know, describe -- generally describing the
23 project. Yes. And in that, some of the things are the
24 required figures for the project, description of the project,
25 we may even need some engineering specs for the project too, so

1 we can either review that or have someone else in the Corps
2 locally here review the engineering specs if we're not capable
3 of doing that.

4 Also, the statement about the mitigation, you
5 know, if that's required or not, if it rises to the level of
6 needing some sort of -- of mitigation. And again, I'm not
7 speaking to this specific project in the Rio Grande that we're
8 here today discussing. I'm talking about a typical project.

9 If you meet all those criteria there, then it
10 can be federally complete. If you have sufficient information
11 to make a decision on all those criteria, it can be federally
12 complete. In some cases, and not every case, it could require
13 a coordination with, say, the Fish and Wildlife Service,
14 because it could -- if there's a listed species in that
15 location, it may be affected by the project. That has nothing
16 to do with federally complete. But it delays our ability to
17 render a decision until that process is complete.

18 So I'm not saying that's necessary, and I'm not
19 saying it is or isn't for this floating buoy project. I'm just
20 trying to give you an example of -- of what, typically, might
21 occur, you know? So I could -- in this case, though, I could
22 see us coordinating with the IBWC in this case. But I don't
23 know in what form, because it's -- again, we don't have any
24 information for the project, so...

25 **Q. Have you ever personally been involved in a project**

1 or learned of a project that did require coordination with the
2 IBWC?

3 A. I have not been.

4 Q. Okay. Are you aware of any such projects that had
5 been handled by the Fort Worth Division of the Army Corps of
6 Engineers?

7 A. So I'm not personally aware of that.

8 Q. Okay. So if I understand, there's Level 1, which is
9 getting to a federally complete application, then there is a
10 Level 2, which is where you have a federally complete
11 application, but you don't have all the steps completed that
12 would allow the Army Corps of Engineers to actually make a
13 decision on the application for a permit. And then there's
14 whatever period is required for the Corps of Engineers to
15 decide whether to issue the permit after it completes Level 2,
16 and reaches the point at which the -- the Corps of Engineers
17 could act on the permit?

18 A. Well, I wouldn't describe those as levels. But the
19 vast majority of applicants that come to us, we can simply make
20 a determination when they've supplied us with enough
21 information it is federally complete, and we can render a
22 decision. But in the case that they maybe have to -- we may
23 have to involve or coordinate with another federal or state
24 agency, that can entail a diff- -- you know, more time.

25 Q. And sometimes does it require coordination with

1 multiple federal or state agencies?

2 A. From -- for complex projects, that's typical.

3 Q. Okay. Have you or anybody at the Army Corps of
4 Engineers, to your knowledge, done any research regarding
5 potential commercial uses of the Rio Grande River in the
6 segment where the floating buoys are located?

7 A. I'm not aware of that.

8 Q. Okay. Is it fair to say that the -- the Rio Grande
9 River in Maverick County is not subject to the ebb and flow of
10 the tides?

11 A. That's correct.

12 Q. Is it fair to say that, to the best of your
13 knowledge, the Rio Grande in -- River in Maverick County is not
14 presently used to transport interstate or foreign commerce?

15 A. I don't know the answer to that question.

16 Q. Do you -- do you have any knowledge that it is used
17 to --

18 MR. LYNK: Object --

19 Q. (BY MR. BRYANT) -- presently to inter- -- to
20 transport interstate or foreign commerce?

21 MR. LYNK: Object to form.

22 A. I'm not aware of actual use in that capacity.

23 Q. (BY MR. BRYANT) Okay. Has the Rio Grande in
24 Maverick County, to your knowledge, been used in the past to
25 transport interstate or foreign commerce?

1 A. So I'm not personally aware of that.

2 Q. Are you aware by even second- or thirdhand means?

3 A. No.

4 MR. LYNK: Object to form.

5 Sorry.

6 Q. (BY MR. BRYANT) Okay. Do you have any information
7 or knowledge, either personal or secondhand, that the Rio
8 Grande in Maverick County is or may be susceptible for use to
9 transport interstate or foreign commerce?

10 A. Well, it's designated as a Section 10 water, so I
11 would -- I would -- I would rely on that designation.

12 Q. Okay. Do you have any information other than that?

13 A. No.

14 Q. Do you have any knowledge regarding any historical
15 use of canoes or other frontier craft on the Rio Grande River
16 in Maverick County, Texas?

17 MR. LYNK: I'm going to object that this line of
18 questioning is going beyond the scope of -- that was authorized
19 for expedited discovery today.

20 You can answer, if you know the answer.

21 A. I don't know.

22 Q. (BY MR. BRYANT) Do you have any knowledge of any
23 transportation of grains, furs or other agricultural products
24 up and down the Rio Grande River in Maverick County?

25 A. I don't have that information.

1 Q. Okay. Do you have any information regarding any
2 transportation of logs or any other commercial product up and
3 down the Rio Grande River in Maverick County?

4 A. I don't have that information.

5 Q. Have you ever seen in the Rio Grande River in
6 Maverick County any watercraft or vessels other than law
7 enforcement or government vessels?

8 A. Well, I've noticed watercraft in the river, but I --
9 I could not identify definitively what they are in -- in every
10 case.

11 Q. Okay. Were there any watercraft in the river that
12 you've seen that you could definitely identify as not being
13 part of law enforcement or government?

14 MR. LYNK: Object to form.

15 A. Not that I'm aware.

16 Q. (BY MR. BRYANT) Okay. Have you ever seen any
17 vessels in the Rio Grande River in Maverick County that were
18 transporting any kind of goods other than the buoys?

19 A. Not that I'm aware.

20 Q. Have you ever seen any recreational watercraft on the
21 Rio Grande River in Maverick County?

22 MR. LYNK: Object to form.

23 A. Not that I'm aware.

24 Q. (BY MR. BRYANT) Have you ever received any
25 information about any such recreational watercraft in use in

1 the Rio Grande River in Maverick County, Texas?

2 A. I don't have any information to that effect.

3 Q. Okay. We talked earlier about a -- a bunch of
4 different terms that I asked, and I asked you whether or not
5 you regarded the floating buoys as a jetty. What do you
6 understand a jetty to be?

7 A. A structure in a river that directs or deflects
8 float --

9 Q. Okay.

10 A. -- for a particular reason.

11 Q. And what do you understand a -- a boom to be?

12 A. A similar -- similar situation.

13 Q. Okay. Do you recall -- I'm sorry. Strike that.

14 Do you regard the buoys as either an aid or an
15 obstacle to navigation of the Rio Grande River?

16 MR. LYNK: Object to form.

17 You can answer.

18 A. Excuse me. With the information I have, I don't
19 believe it's an aid to navigation.

20 Q. (BY MR. BRYANT) Okay.

21 A. So the second part of that is -- refers to being an
22 obstacle --

23 Q. An obstacle, yes.

24 A. It appears to affect the navigable capacity of the
25 river under the regulations.

1 Q. Okay. And since I'm not 100 percent sure about what
2 the regulations mean by "navigable capacity," I need to ask you
3 to answer my question, which is, do you regard it as an -- as
4 an obstacle to navigation of the river?

5 MR. LYNK: Object to form.

6 You can answer.

7 A. Okay. Well, certainly, the -- you know, with the
8 configuration of the -- the line of buoys in the river, it's
9 a -- it's -- it's a barrier to cross river navigation. So --
10 so a vessel can't navigate from one side of the river to the
11 other without encountering that obstacle there. So does that
12 answer your question?

13 Q. (BY MR. BRYANT) Well, if -- if that means -- if
14 that's what you mean by it being an obstacle to navigation,
15 then it does. Do you regard it as an obstacle to navigation in
16 any other sense?

17 A. Well, as I stated in my declaration, I -- you know,
18 the -- a vessel traveling from one side of the river to the
19 other in that location would have to either maneuver around it
20 or it would in- -- you know, impact it or come into contact
21 with it -- with the barrier, the floating buoys in this case.

22 Q. Okay.

23 A. It's -- it is also, I think, blatantly obvious that,
24 you know, if a vessel's navigating the river, you know, up or
25 downstream, it's an -- it's a object that the -- whoever's

1 driving or steering the vessel would have to take note of and
2 make sure they avoid it.

3 Q. They'd have to avoid it by going 6 or 10 feet to one
4 side of it?

5 A. Avoid it at whatever distance they deem necessary.

6 Q. Yeah. But the -- the buoys are only, what, at
7 maximum, six feet in diameter, up and down --

8 MR. LYNK: Object to form.

9 Sorry.

10 Q. (BY MR. BRYANT) -- you know, as -- as you approach
11 them from up river?

12 MR. LYNK: Object to form.

13 A. So when I was on-site on the 13th of July as they
14 were being constructed, that's -- that's what I observed,
15 correct.

16 Q. (BY MR. BRYANT) Okay. To your knowledge, is the
17 U.S. Coast Guard at all active in the portion of the Rio Grande
18 River that is within the jurisdiction of the Fort Worth
19 Division of the Army Corps of Engineers?

20 A. I don't have information to answer that.

21 Q. Okay.

22 MR. LYNK: Counsel --

23 MR. BRYANT: Let's take a break.

24 MR. LYNK: Yeah. That's what I was about to
25 ask.

1 THE REPORTER: We are going off the record at
2 12:17 p.m.

3 (Break taken from 12:17 p.m. to 12:31 p.m.)

4 THE REPORTER: We are going back on the record
5 at 12:31 p.m.

6 Q. (BY MR. BRYANT) Mr. Shelnutt, I have marked a few
7 more exhibits. Could you take a look at what I've marked as
8 Exhibit 3 to your deposition?

9 (Exhibit No. 3 was marked.)

10 A. Okay.

11 Q. (BY MR. BRYANT) Exhibit 3 is a map that I copied
12 from the -- from an Army Corps of Engineers website, but aside
13 from that, can you identify that map?

14 A. This is a map of Texas and surrounding states that
15 shows various U.S. Army Corps of Engineers districts.

16 Q. Have you seen that map or a map like that before?

17 A. I have.

18 Q. Okay. And do you ever consult that in your work for
19 the Army Corps of Engineers?

20 A. Yes.

21 Q. Okay. And I wish the -- it were more distinct,
22 because I think the original is in color. But as you look at
23 the portion of Exhibit 3 that depicts the Rio Grande River and
24 its course in Texas, is that divided up within several
25 different Army Corps of Engineers districts?

1 A. Yes.

2 Q. And it's pretty easy, I think, to see on Exhibit 3
3 where the jurisdiction of the Galveston District of the Army
4 Corps -- Corps of Engineers ends on the Rio Grande River. And
5 then what division has the jurisdiction over the area of the
6 Rio Grande River just west of where the Galveston District's
7 jurisdiction stops?

8 A. So just upstream of the Rio Grande River from the
9 Galveston District is the Fort Worth District's.

10 Q. Okay. And what counties along the Rio Grande River
11 does the Fort Worth District have jurisdiction over?

12 A. Webb, Maverick, Kinney, Val Verde.

13 Q. Okay. And at the Val Verde county line on the west,
14 what Army Corps of Engineer district takes over jurisdiction?

15 A. Well, that would be the Albuquerque District.

16 Q. So the Albuquerque District has jurisdiction over
17 quite a number of counties in Texas along the Rio Grande River?

18 A. Correct.

19 Q. Do you have any knowledge or information as to why
20 that division of responsibility among three different Army
21 Corps of Engineers districts along the Rio Grande River was
22 done?

23 A. Those -- those district boundary lines were done
24 before my -- before I came along as a Corps employee, so I'm
25 sure -- I'm not aware of the data they made this decision upon.

1 Q. Do you have any information as to why it was made by
2 whoever made it?

3 A. Any -- anything -- any response I would have would be
4 speculative, so...

5 Q. Okay. I think in your declaration, it says that your
6 office is located some seven hours from Eagle Pass, Texas; is
7 that right?

8 A. That's correct.

9 Q. Is there any part of your -- of the Fort Worth
10 District that is farther from your office than Maverick County,
11 Texas?

12 A. Well, I can't be sure, but that's one of the furthest
13 reaches away from the office that we have jurisdiction over.

14 Q. Okay. Could you take a look at --

15 A. Or responsibility.

16 Q. I'm sorry. I didn't mean to cut you off.

17 A. That's okay.

18 Q. Could you take a look at Exhibit 4.

19 (Exhibit No. 4 was marked.)

20 Q. (BY MR. BRYANT) Can you identify Exhibit 4, and
21 please take whatever time you need to review it before you
22 answer the question.

23 A. Yeah. It's a -- it's a list of navigable waters in
24 the United States in the Fort Worth District.

25 Q. Is this a -- a list or document that you use in your

1 work for the Corps of Engineers?

2 A. This is a document that we refer to on a regular
3 basis.

4 Q. And is -- this document bears the date,
5 December 20th, 2011. Is this the same 2011 document that you
6 refer to in your declaration? I believe it's referred to in
7 Paragraph 3. Or a document is. I wanted to see if this
8 Exhibit 4 is that document.

9 A. That is correct.

10 Q. Okay. So is it fair to say that, fundamentally,
11 Exhibit 4 is the basis on which you concluded that the current
12 location of the floating buoys in the Rio Grande River in
13 Maverick County, Texas is part of the navigable waters of the
14 United States?

15 A. That's correct.

16 Q. Now, earlier, I asked you -- earlier, I asked you
17 about the involvement of the Coast Guard in the area of the
18 Rio Grande River that is within the jurisdiction of the
19 Fort Worth Division. Do you know whether or not the Coast
20 Guard has a different definition of navigable waters of the
21 United States than the Army Corps of Engineers does?

22 A. If they follow a different definition, then I'm
23 unaware of it.

24 Q. Okay. Do you ever have occasion to deal with U.S.
25 Coast Guard in your work?

1 A. So in -- in my work, our district has, but I
2 personally have not.

3 Q. Okay. What is your understanding of the situations
4 in which the Fort Worth District of the Army Corps of Engineers
5 has dealings with the U.S. Coast Guard?

6 A. I -- I'm not cognizant of the entire situation where
7 we might have cause to coordinate with or communicate with the
8 Coast Guard, but I do know Section 9 of The Rivers and Harbors
9 Act is one of those -- one of those instances.

10 Q. Okay. Are you aware of any involvement of the U.S.
11 Coast Guard in making any determinations pursuant to Section 10
12 of the Rivers and Harbors Act of 1899?

13 A. So when you say "making a determination," are you
14 referring to our determination?

15 Q. Either our -- either the Army Corps of Engineers
16 determinations or any other agencies' determinations.

17 A. So could you repeat the entire question again?

18 Q. I'll do my best.

19 A. Thank you.

20 Q. Are you aware of any involvement of the United States
21 Coast Guard in the making of determinations under Section 10 of
22 The Rivers and Harbors Act of 1899 by the Army Corps of
23 Engineers or any other federal agency?

24 A. No.

25 Q. Has anybody ever suggested that it would be advisable

1 or even relevant to -- to consult the U.S. Coast Guard in any
2 way in making a determination under Section 10 of The Rivers
3 and Harbors Act of 1899?

4 MR. LYNK: Object to form.

5 You can answer.

6 A. No.

7 Q. (BY MR. BRYANT) We talked a little bit today about
8 whether or not the floating buoys in the Rio Grande River that
9 are the subject of this lawsuit are structurally connected to
10 the bed of the Rio Grande River. Do you have any understanding
11 as to what the term "structure" means under the -- Section 10
12 of The Rivers and Harbors Act of 1899?

13 A. My understanding is just, patently obvious,
14 structure, you know, as commonly referred to as, you know, any
15 structure in layman's terms.

16 Q. Well, what does -- what does that mean to you?
17 Because it's -- you know, it's not a -- something I think
18 everybody would automatically agree with.

19 A. An object or -- or other equipment present in the
20 waterway.

21 Q. Okay. Well, a fish is an object. There are lot of
22 things that are objects. Would you call all of them
23 structures?

24 A. I wouldn't call something that's biological an
25 object.

1 Q. Okay.

2 A. No.

3 Q. Would you call a rock a structure?

4 A. If it's naturally occurring, no. If it's placed
5 there by, you know, a human -- deliberate human interaction,
6 then it could be considered, you know, an object, either
7 singularly or in aggregate with other such, you know, objects.

8 Q. Okay. And you know, I'm not -- I'm not just trying
9 to argue with you.

10 A. I understand.

11 Q. I'm really trying to understand what -- how you would
12 define that term, because if I throw a rock in the water, then
13 I placed it in there, but to me that's not a structure. And
14 that's probably true even if I threw 10 or 100 of them in the
15 water. So what is your def- -- what is your best definition of
16 a structure?

17 MR. LYNK: Object to form.

18 Q. (BY MR. BRYANT) For purposes of this Section 10 of
19 the har- -- Rivers and Harbors Act of 1899.

20 A. Well, if you're asking would I consider the floating
21 buoys or, you know, the system that -- not the bu- -- not only
22 the buoys themselves, but any other apparent structures or
23 devices that might be employed to hold it in place or otherwise
24 make it function as -- make it a viable -- viably function as
25 it's intended, then I consider that a structure.

1 So to get back to your rock, I mean, if
2 someone's skipping rocks across the river, it may end up in the
3 river, obviously, that's not a structure. But placement of
4 material in such a way, in singularly or in aggregate --
5 aggregate, whether it's a natural material, it could be
6 constructed or -- or aligned in a way that might be considered
7 a structure is a possibility, but also manufactured material or
8 the movement of other material that might be aggregated or
9 assembled in a way could also be considered a structure.

10 **Q. Well, would you consider it a structure in all**
11 **instances?**

12 A. Would I consider what a structure?

13 **Q. What you just described.**

14 MR. LYNK: Object to form.

15 A. As I describe and understand it, I just described
16 what I would consider a structure. But, you know, I would --
17 we don't make decisions on theoretical, you know, definitions.
18 We make decisions on the information that's in front of us to
19 define what a structure might be.

20 **Q. (BY MR. BRYANT) Okay.**

21 A. Okay?

22 **Q. If I were to string a lot of the kind of rafts that**
23 **you and I might float in a swimming pool on together in a**
24 **river, would you consider that a structure?**

25 MR. LYNK: Object to form.

1 A. Well, I don't have a lot of information to base that
2 on. You know -- you know, it's -- it's possible.

3 **Q. (BY MR. BRYANT) Okay. You testified, if I**
4 **understood you correctly earlier, that the Army Corps of**
5 **Engineers would consider a tunnel that goes under a river as**
6 **affecting its navigable capacity; is that correct?**

7 A. That's what the regulations indicate.

8 **Q. Okay. Could you explain to me as best you understand**
9 **it why tunneling under a river affects the navigable capacity**
10 **of that river?**

11 A. So I don't know all the -- the reasons behind that,
12 but some of it points to, you know, if you have a tunnel under
13 the river, you know, or a structure under the river that has a,
14 say, a pipe with -- with material in the pipe, there is
15 potential for that structure to become -- or tunnel, if it's
16 just a tunnel, to actually become, through flows and energy
17 movement across the riverbed or -- or maybe material in the --
18 in the tunnel or pipe might be -- might encounter pressures
19 that either make it exposed to the riverbed or could actually,
20 you know, erupt material out of the pipe into the riverbed, and
21 therefore, cause a navigation or affect navigable capacity.
22 Now, I don't know that that's the entire reason for that, but
23 that's my understanding.

24 **Q. Are you aware of instances in which the Courts have**
25 **found that the Army Corps of Engineers interpreted terms in the**

1 law too broadly?

2 A. I'm not aware of specific instances or specific
3 cases.

4 Q. Okay. Have you ever heard of a case called Sackett
5 versus the Environmental Protection Agency that was decided
6 May 25th, 2023?

7 A. I've heard of that.

8 Q. Yeah. And is that one in which the Supreme Court of
9 the United States found that a definition that the EPA and the
10 Army Corps of Engineers had been using was too broad, and --
11 and they made a different decision?

12 MR. LYNK: I'll object that questions about the
13 Sackett Case are going beyond the scope of the authorized
14 expedited discovery topic.

15 You can answer, if you know the answer.

16 A. I'm -- I'm aware of the Sackett case. There's been a
17 lot of publicity, obviously. I haven't read the information
18 around it. All that I've read or heard of excerpts, I don't
19 know, so I don't know if it's -- your characterization of "too
20 broadly" applies or not.

21 Q. (BY MR. BRYANT) Okay. Would you agree that,
22 ultimately, it's the Courts and the judges who have to decide
23 what laws like The Rivers and Harbors Act of 1899 mean rather
24 than the Army Corps of Engineers?

25 A. So the Army Corps of Engineers in its regulatory

1 capacity often interprets the -- the laws that's given to us
2 and the regulations that's given to us. I also understand
3 regularly that things change in the legal environment where
4 that affects our understanding and interpretation of laws and
5 regulations and things shift, and we shift with them as
6 required.

7 Q. And do you understand that it's the -- it's the
8 Courts, the judges, who make the definitive interpretation of
9 what the law means, that you -- that you at the Army Corps of
10 Engineers have to do your best to enforce?

11 A. Yes.

12 Q. Okay. The Rio Grande River's a long river, even just
13 in Texas. Have you seen it referred to as different segments
14 in your work at the Army Corps of Engineers?

15 A. I have not.

16 Q. Okay. Have you seen enough of the Rio Grande River
17 to know that it really is quite different at different points
18 in the river?

19 MR. LYNK: Object to form.

20 You can answer.

21 A. Well, like any -- any, you know, perennial
22 waterbody -- flowing waterbody that courses along a distance,
23 it's -- it's natural to encounter, you know, different
24 ecological and biological and geomorphological, you know,
25 changes across its continual.

1 Q. (BY MR. BRYANT) And is that true of the Rio Grande
2 River in Texas?

3 A. The Rio Grande River changes in function and form
4 along its course.

5 Q. Okay. Based on what you've seen of the floating
6 buoys in the Rio Grande River in Maverick County, Texas, do you
7 see any harm that they're actually doing at this point?

8 A. Well, I don't -- harm to -- harm in what way?

9 Q. Well, that -- I would include any way.

10 MR. LYNK: I'm going to object that this is
11 beyond the scope of the authorized expedited discovery. I'm
12 actually going to instruct the witness not to answer on this
13 one. The -- the Court did not authorize testimony about -- or
14 discovery into the issue of harm.

15 Q. (BY MR. BRYANT) Could you take a look at exhibit --
16 let's see.

17 MR. BRYANT: Do we have a five? Okay. This one
18 is marked 6.

19 THE REPORTER: Oh, it says -- sorry.

20 MR. BRYANT: Should we mark it 5?

21 THE REPORTER: No, it's 5. I just have bad
22 handwriting.

23 MR. BRYANT: Oh, okay. I'm sorry. I misread
24 it.

25 THE REPORTER: I could put a new sticker.

(Exhibit No. 5 was marked.)

Q. (BY MR. BRYANT) Okay. Let me show you, Mr. Shelnutt, what's been marked as Exhibit 5. This is a portion of a regulation of the Coast Guard. Have you ever seen or consulted that regulation in connection with your work for the Army Corps of Engineers?

A. So not the Coast Guard regulation, so...

Q. Okay. And I assume you have -- have consulted the Army Corps of Engineers regulation on a similar subject?

A. Correct.

Q. Okay. Is it fair to say, then, that -- that the Coast Guard regulation that is in Exhibit 5 is not something that you have considered relevant at all to your work at the Army Corps of Engineers to date?

A. Well, let me take a minute to read over this, because I don't know --

Q. Please do.

A. I don't know if there's overlap or how much overlap there is between Coast Guard regulations and regulations that might be relevant to -- to us in the Corps.

Q. Okay. And please take as much time as you --

A. Okay.

Q. -- as you want to review Exhibit 5.

A. (Reviewing document.) Okay.

Q. So my question is, have you ever considered or do you

1 consider now the Coast Guard's definition that's set forth in
2 Exhibit 5 as relevant to determinations of -- under Section 10
3 of The Rivers and Harbors Act of 1999 [sic] as far as you and
4 the Army Corps of Engineers are concerned?

5 A. So there are portions of this document, Exhibit 5,
6 that seem familiar to me. But since this is, you know, some of
7 this refers to U.S.C. 1321 and 1322, and you know, what -- what
8 various aspects of this, you know, language means here and
9 others. So I can understand that there's significant overlap
10 between, you know, our regulations under 18 -- Rivers and
11 Harbors Act under 18- -- Rivers and Harbors Act of 1899 and
12 this.

13 But I'm not sure the -- I'm not sure of the
14 exact wording here, so I want to say that we rely on,
15 traditionally, you know, our regulations, and we don't go to
16 another agency's interpretation of regulations to -- typically,
17 to make those decisions.

18 Q. Okay.

19 A. That is not to say that we don't coordinate, if
20 necessary, with other -- other agencies --

21 Q. Okay.

22 A. -- you know, and their requirements, so...

23 Q. Is it fair to say that you did not in any way consult
24 the regulation that's Exhibit 5 or anything else from the Coast
25 Guard --

1 A. I didn't -- I didn't look --

2 Q. -- in making your determination with respect to the
3 floating buoys that are in the Rio Grande River?

4 A. I didn't look at this -- these regulations that you
5 have marked at Exhibit 5 to make a determination.

6 Q. Okay. And you didn't get any -- have any other
7 interaction with the Coast Guard?

8 A. No.

9 Q. Okay. Let me just try to sum up a few things, and
10 then I think we're done. Strike that.

11 Let me ask another question or two. Did
12 Mr. Lebsock have any role in determining for the Corps of
13 Engineers whether or not the floating buoys constitute a
14 violation of Section 10 of The Rivers and Harbors Act of 1899?

15 A. So since -- since he's my chief and this is, you
16 know, a visible project on the Rio Grande, naturally, we
17 discussed it. And so we both agree that -- that yes.

18 Q. Okay. Would you say that he -- he made the decision
19 more than you or that you made the decision more than him or --

20 A. I think it --

21 Q. -- were they both equal?

22 A. I think it's equal.

23 Q. Okay. Did anybody else at the Army Corps of
24 Engineers, besides the two of you, have a role in that
25 decision?

1 A. At the district level here in Fort Worth, no.

2 Q. At any other level?

3 A. Decisions outside of the Fort Worth District, I'm not
4 privy to.

5 Q. Well, my question is, did anyone outside the
6 Fort Worth District in the Corps of Engineers have any role in
7 making this particular decision with respect to the floating
8 buoys, to your knowledge?

9 A. Well, to my knowledge -- to my knowledge, no.

10 Q. Okay. And in making the conclusion that -- that the
11 floating buoys violate Section 10 of The Rivers and Harbors Act
12 of 1899, as I understand it, no one did any kind of study or
13 observation of any present navigation of that section of the
14 Rio Grande River; is that right?

15 MR. LYNK: Object to form.

16 A. I'm not aware of any recent study.

17 Q. (BY MR. BRYANT) Okay. And is it also true that in
18 making that determination, the Army Corps of Engineers did not
19 make any consideration of possible future commercial uses or
20 navigation of that section of the Rio Grande River?

21 MR. LYNK: Object to form.

22 A. Could you restate that again?

23 Q. (BY MR. BRYANT) I'll try. Is it correct that in
24 making the determination that the floating buoys violate
25 Section 10 of The Rivers and Harbors Act of 1899, the Army

1 Corps of Engineers did not include any consideration of
2 possible future commercial navigation in that area of the Rio
3 Grande River where the floating buoys are currently located?

4 A. So at the Fort Worth District, no.

5 Q. Do you know of any other part of the Corps of
6 Engineers that did consider that?

7 A. I'm not aware.

8 Q. Okay. And is it correct that the Army Corps of
9 Engineers did not make any study or consideration of any past
10 commercial navigation in the section of the Rio Grande River
11 where the floating buoys are located in making its
12 determination that the floating buoys violate Section 10 of the
13 Rivers and Harbors Act of 1899?

14 MR. LYNK: Object to form.

15 You can answer.

16 A. So I'm not aware of any recent studies, and I'm
17 not -- and we did not refer to or research any other studies --

18 Q. (BY MR. BRYANT) Okay. And --

19 A. -- at the Fort Worth District level.

20 Q. Okay. Are you aware of any such consideration at any
21 other level?

22 A. I'm not aware.

23 Q. And in making that determination with respect to the
24 current site of the floating buoys, is it also correct that the
25 Army Corps of Engineers did not consider and has not determined

1 whether the floating buoys substantially interfere with any
2 commercial navigation on the Rio Grande River?

3 A. Specifically commercial navigation, you're asking?

4 Q. That's my -- that was my question, yes.

5 A. We didn't -- we didn't do a study to make a
6 determination, specifically, about commercial navigation.

7 Q. Did you do anything else other than look at -- at the
8 list?

9 A. No. Referring to the list is common for us to do in
10 this state -- in this district.

11 MR. BRYANT: Mr. Shelnutt, thank you very much,
12 and I pass the witness.

13 MR. LYNK: Just go off the record, and I'll take
14 a quick -- quick break.

15 THE REPORTER: We are going off the record at
16 1:03 p.m.

17 (Break taken from 1:03 p.m. to 1:06 p.m.)

18 THE REPORTER: We are going back on the record
19 at 1:06 p.m.

20 MR. LYNK: I have no questions for the witness.

21 MR. BRYANT: Mr. Shelnutt, thank you very much.
22 Appreciate your time and your thoughtfulness.

23 THE WITNESS: Thank you.

24 THE REPORTER: Okay. And Mr. Lynk, just for the
25 record, do you want a copy of the transcript?

1 MR. LYNK: I do.

2 THE REPORTER: Okay. We are going off the
3 record at 1:06 p.m.

4 (End of proceedings at 1:06 p.m.)
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PAGE	LINE	CHANGE	REASON
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[illegible]

1 I, JOSEPH SHELNUUTT, have read the foregoing
2 deposition and hereby affix my signature that same is true and
3 correct, except as noted above.

4
5 _____
JOSEPH SHELNUUTT

6
7
8
9 THE STATE OF _____)

10 COUNTY OF _____)

11
12 Before me, _____, on this day
13 personally appeared JOSEPH SHELNUUTT, known to me (or proved to
14 me under oath or through _____) (description of
15 identity card or other document) to be the person whose name is
16 subscribed to the foregoing instrument and acknowledged to me
17 that they executed the same for the purposes and consideration
18 therein expressed.

19 Given under my hand and seal of office this
20 _____ day of _____, _____.

21
22 _____
23 NOTARY PUBLIC IN AND FOR
THE STATE OF _____
24 COMMISSION EXPIRES: _____
25

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil Action
)
) No.: 1:23-00853-DAE
 GREG ABBOTT, IN HIS OFFICIAL)
 CAPACITY AS GOVERNOR OF THE)
 STATE OF TEXAS, AND THE STATE)
 OF TEXAS,)
)
 Defendant.)
)

REPORTER'S CERTIFICATION

DEPOSITION OF JOSEPH SHELNUTT

AUGUST 7, 2023

I, Amber Garcia, Notary Public in and for the State of
Texas, hereby certify to the following:

That the witness, JOSEPH SHELNUTT, was duly sworn by the
officer and that the transcript of the oral deposition is a
true record of the testimony given by the witness;

That the deposition transcript was submitted on
August 8, 2023 to the witness or to the attorney for the
witness for examination, signature and return to me by
September 7, 2023;

That the amount of time used by each party at the
deposition is as follows:

1 MR. BRIAN LYNK.....00 HOUR(S):00 MINUTE(S)
2 MR. DAVID BRYANT.....02 HOUR(S):38 MINUTE(S)

3 That pursuant to information given to the deposition
4 officer at the time said testimony was taken, the following
5 includes counsel for all parties of record:

6 MR. BRIAN LYNK, Attorney for Plaintiff

7 MR. LANDON A. WADE, Attorney for Plaintiff

8 MS. KATHERINE T. ROONEY, Attorney for Plaintiff

9 MR. DAVID BRYANT, Attorney for Defendant

10 That \$_____ is the deposition officer's charges
11 to the Defendant for preparing the original deposition
12 transcript and any copies of exhibits;

13 I further certify that I am neither counsel for, related
14 to, nor employed by any of the parties or attorneys in the
15 action in which this proceeding was taken, and further that I
16 am not financially or otherwise interested in the outcome of
17 the action.

18 Certified to by me this 8th day of August, 2023

19
20
21 

22 Amber Garcia, Notary ID No. 13426953-9
23 Expiration Date: 3/24/2027
24 Integrity Legal Support Solutions
25 Firm Registration No. #528
9901 Brodie Ln, Ste. 160-400
Austin, Texas 78748
(512) 320-8690